

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY TAIPEI PRIORITY

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E.O. 11652: N/A

TAGS: EINV, TW

SUBJECT: 1) PATENT CENSUS; 2) CHANGE IN ROC PATENT LAW
INTERPRETATION

REF: TAIPEI 1471

1. DEPARTMENT APPRECIATES INFORMATION CONTAINED REFTEL
AND COMMENDS EMBASSY'S EFFORTS WHICH RESULTED IN GROC
DECISION NOT TO ALLOW CANCELLATION OF PATENTS FOR NON-
WORKING. WE BELIEVE A GENERAL PATENT CENSUS WILL BE
EXCESSIVELY BURDENSOME ON PATENT HOLDERS AND NATIONAL
BUREAU OF STANDARDS ALIKE; CENSUS APPEARS UNNECESSARY SINCE
GROC COULD INSTEAD CHOOSE ON SELECTIVE BASIS THOSE PATENTS
WHICH COULD REALISTICALLY BE WORKED ON TAIWAN AND REQUEST
UTILIZATION INFORMATION ON A CASE-BY-CASE BASIS. NONETHE-
LESS WE AGREE WITH EMBASSY'S VIEW CONTAINED PARA 2 REFTEL
THAT NO FURTHER APPROACHES SHOULD BE MADE AT THIS TIME.

2. ON ANOTHER SUBJECT, DEPARTMENT AND PATENT OFFICE HAVE
BEEN ADVISED BY INDUSTRY SOURCES THAT ROC MAY BE PLANNING
TO REVISE ITS INTERPRETATION OF EXISTING PATENT LAW.

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ACCORDING TO INFORMATION AVAILABLE, NBS HAS IN RECENT

MONTHS ON BASIS OF NEW LEGAL INTERPRETATION BEEN REFUSING TO GRANT "METHOD OF USE" AND PRODUCT PATENTS FOR CERTAIN AGRICULTURAL CHEMICAL COMPOSITIONS. NBS REFUSALS HAVE HOWEVER REPORTEDLY BEEN OVERTURNED BY MINISTRY OF ECONOMICS ON GROUNDS THAT NO NOTICE OF CHANGE IN LAW'S INTERPRETATION HAD BEEN PROVIDED TO INDUSTRY. REPORTEDLY, SUCH NOTICE WILL BE PUBLISHED AND NBS DECISIONS ON PATENT APPLICATIONS FILED AFTER APRIL 1, 1976 WILL BE UPHELD BY MINISTRY.

3. UNDER NEW INTERPRETATION AGRICULTURAL CHEMICAL INVENTIONS INVOLVING AN ACTIVE INGREDIENT IN A COMPOSITION OR FORMULATION WITH OTHER CONSTITUENTS, COULD NOT BE PATENTED UNDER THE PROPOSED REVISION UNLESS SOME TYPE OF SYNERGISTIC (I.E. COACTIVE) EFFECT WAS PRESENT. SUCH INVENTIONS HAVE BEEN PATENTABLE IN THE PAST. IN ADDITION, METHOD OF USE INVENTIONS ALSO WOULD BE BARRED FROM PATENTABILITY UNDER NEW INTERPRETATION. ONE SOURCE REPORTS THAT INTERPRETATION MAY APPLY TO ENTIRE CHEMICAL INDUSTRY.

4. INDUSTRY SOURCES HAVE ADVISED THEY BELIEVE NEW INTERPRETATION MAY BE AT THE INITIATIVE OF TAIPEI CHEMICAL INDUSTRY WHICH WOULD LIKE TO PIRATE VARIOUS CHEMICAL INVENTIONS OF FOREIGN FIRMS. IF THIS TOOK PLACE, U.S. FIRMS MIGHT FACE LOSS OF TAIWAN MARKET AND POSSIBLE OF OTHER EXPORT MARKETS IN FAR EAST. SEVERAL LARGE U.S. FIRMS COULD BE ADVERSELY AFFECTED.

5. DEPARTMENT REALIZES THAT FOREGOING INFORMATION IS SOMEWHAT TECHNICAL. NONETHELESS, EMBASSY IS REQUESTED TO ATTEMPT TO VERIFY ACCURACY OF THIS INFORMATION INCLUDING EFFECTIVE DATE, EXTENT OF APPLICABILITY, ETC. NBS WOULD PROBABLY BE MOST RELIABLE SOURCE. ONE FIRM (MONSANTO) PRESENTLY CONSIDERING VISIT BY AGRICULTURAL CHEMICAL INDUSTRY PATENT ATTORNEY TO MEET WITH NBS OFFICIALS AND ASSESS SITUATION. REQUEST EMBASSY'S ADVICE ON ADVISABILITY SUCH VISIT AND EMBASSY'S ABILITY TO ASSIST IN MAKING APPOINTMENTS, ETC. KISSINGER

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